No. 82-1127

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

HELICOPTEROS NACIONALES DE COLOMBIA, S.A.,
PETITIONER

v.

ELIZABETH HALL, *ET AL.*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

and

BRIEF FOR THE MOTOR VEHICLE MANUFACTURERS ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF REVERSAL

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The Motor Vehicle Manufacturers Association of America, Inc. ("MVMA") respectfully moves pursuant to Rule 36.3 of the Rules of this Court for leave to file a brief amicus curiae in this case in support of petitioner. The consent of counsel for petitioner and respondents was requested but has been withheld.

The MVMA is a trade organization primarily composed of automobile manufacturers. Members of the MVMA build over 99% of all motor vehicles manufactured in the United States. In addition, MVMA members manufacture various other products, including tractors and agricultural equipment, construction and mining machinery, locomotives and railroad rolling stock, and gasoline and diesel engines for innumerable industrial and agricultural uses. Products manufactured by members of the MVMA are sold throughout the United States.

The commercial activities of MVMA members have resulted in a substantial number of lawsuits filed by plaintiffs in distant and inconvenient forums. The forums selected for such suits frequently have no connection with the events giving rise

to the litigation and are remote from the domicile of all of the parties and witnesses. Such suits impose substantial burdens on members of the MVMA and interfere with the efficient conduct of their business in interstate commerce.

A recent example of such a suit, involving an MVMA member, is *Cowan* v. *Ford Motor Company*, 694 F.2d 104 (5th Cir. 1982), suggestion for rehearing en banc pending. In that case, the plaintiff, a Texas resident, brought suit in Mississippi to redress an alleged tort that occurred in Texas. Neither the plaintiff nor the tort had any connection with the forum state and the motor vehicle involved in the case had no connection with that state. Likewise, the defendant was neither domiciled in nor had its principal place of business in the forum state. The defendant's sole connection with the forum was its sale of products in the state, which was comparable to its sale of products in every other state, and its appointment of a local agent to accept process, which is required in every state where it sells products. The plaintiff filed suit in Mississippi for the sole purpose of evading the restrictions of the statute of limitations of the jurisdiction where the alleged tort took place. A panel of the Fifth Circuit nonetheless sustained *in personam* jurisdiction under the Due Process Clause because the defendant did some business in Mississippi and because it had, in accordance with local law, appointed an agent to receive process. The reasoning of this Court's decision in the present case (and also in *Keeton* v. *Hustler Magazine Inc.*, No. 82-485) is likely to affect the disposition of the *Cowan* case as well.

Unless it is overturned,* the panel's decision in *Cowan* would expose any manufacturer doing business on a nationwide

* The *Cowan* decision is still before the Fifth Circuit on Ford's suggestion for rehearing *en banc*. Supplemental briefs have been filed at the request of the court. If the panel's decision stands, Ford's attorneys will recommend that a petition for certiorari be filed in this Court.

basis to suit on any cause of action in the state which has the longest statute of limitations as to any subject. The *Cowan* case exemplifies the burdensome litigation to which MVMA members have been increasingly exposed in recent years as a result of their sale of products throughout the nation, and illustrates the direct interest of the MVMA — as well as most other companies doing business nationwide — in the resolution of the question raised in this case.

The present case requires the Court to further define the limitations imposed by the Due Process Clause on forum-shopping activities of plaintiffs who bring suit in inconvenient jurisdictions having no substantial nexus to the controversy in question. The MVMA believes that it can address this issue from the vantage point of business corporations which have direct experience with the burdens imposed by such litigation. The views of domestic manufacturers should materially assist the Court and provide a useful supplement to the presentation of petitioner, a corporation domiciled in another nation.

Respectfully submitted,

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MAY 1983

QUESTION PRESENTED

Whether the Due Process Clause bars a state court from exercising *in personam* jurisdiction over a corporation when the forum state is neither the state of incorporation nor the principal place of business of the corporation, and all of the events relevant to the controversy occurred outside the state and had no effect on any of its residents.

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INTEREST OF THE AMICUS CURIAE

As explained in the foregoing motion for leave to file the instant brief amicus curiae, the Motor Vehicle Manufacturers Association (MVMA) is a trade organization that includes the nation's principal manufacturers of motor vehicles. Members of the MVMA distribute their products in interstate commerce in every state in the union. As a result, those members have been exposed to lawsuits brought in inconvenient forums which are far removed from the domiciles of the parties and witnesses, and which have no relationship to the subject matter of the litigation.

Such forum shopping by plaintiffs imposes a substantial burden on members of the MVMA. Accordingly, the MVMA has a strong interest in the disposition of the present case, in which the Court is called upon to further define the limitations imposed by the Due Process Clause on state court jurisdiction over foreign corporations.

STATEMENT

1. In January 1976, a helicopter owned by petitioner Helicopteros Nacionales De Colombia, S.A. ("defendant") crashed in the Amazon jungles of Peru. Four citizens of the United States died in that accident (Pet. App. 1a, 63a). Those persons resided in Oklahoma, Illinois, and Arizona *(id.* at 48a). Following the accident, respondents Elizabeth Hall, *et al.* ("plaintiffs"), who were relatives of the decedents, filed suit against defendant in the District Court of Harris County, Texas, alleging that pilot negligence caused the helicopter crash *(id.* at 63a). None of the plaintiffs is a resident of Texas *(id.* at 15a).

The defendant is a corporation organized under the laws of the nation of Colombia (Pet. App. 32a), with its principal place of business in South America (*id.* at 33a). At the time of the helicopter crash, defendant was engaged in the transportation of workers and supplies in Peru. Defendant does not maintain any offices in Texas, is not authorized to do business in Texas, and does not recruit employees in Texas *(id.* at 2a).

However, defendant has conducted certain business activities in Texas on a continuous and systematic basis. In particular, it purchased substantially all of its helicopter fleet in Texas, spending approximately $4 million ($50,000 per month) from 1970 to 1976 as a purchaser of equipment, parts and services (Pet. App. 3a). It also sent employees to Texas to pick up helicopters and sent pilots and maintenance personnel to Texas for training (*ibid.*). It conducted negotiations in Texas and elsewhere that led to the signing in Peru of its contract to provide helicopter service. It received roughly $5,000,000 pursuant to that contract, which was paid from a bank in Texas *(id.* at 2a-3a; Pet. Reply Br. App. 79a-81a).

2. Defendant filed a special appearance in the trial court and sought dismissal of the complaints, contending, *inter alia,* that the Due Process Clause forbids assertion of *in personam* jurisdiction over it (Pet. App. 63a-64a). The trial court

overruled the special appearance and motion to dismiss. Following a trial by jury, it entered judgment against defendant in the sum of $1,141,200 (*id.* at 64a).

On appeal from that judgment, the Court of Civil Appeals of Texas reversed, holding that the trial court lacked *in personam* jurisdiction (Pet. App. 63a-71a). With three Justices dissenting, the Supreme Court of Texas initially affirmed the decision of the Court of Civil Appeals (Pet. App. 46a-62a), noting that "[n]one of the plaintiffs in this suit are Texas residents, nor were any of the deceased workers. All of the events relevant to the cause of action occurred in South America" (*id.* at 55a). The court explained that the complaints alleged negligent "pilot error" in Peru, not defective manufacture of any product in Texas (Pet. App. 53a). In that situation, the court concluded, jurisdiction could be asserted over the defendant foreign corporation only if it had a "general presence" in the forum (*id.* at 54a) comparable to that in *Perkins* v. *Benguet Mining Co.*, 342 U.S. 437, 445 (1952):

> "*Perkins* illustrates the type of activity that has been held sufficient to justify the exercise of jurisdiction based upon *unrelated* contacts with the forum. In *Perkins*, the corporate defendant carried out extensive business activities in the forum state, including banking, correspondence, maintenance of official records, holding of directors' meetings, and payment of employee salaries. These activities were so substantial that the forum became the temporary headquarters of the corporation. The exercise of jurisdiction under such circumstances was thus justified by the fact that the corporate defendant became, in effect, a resident of the forum. As a commentator has observed, 'The proper characterization of *Perkins* * * * is that it never offends traditional notions of fair play and substantial justice for a defendant to be sued in his own backyard, no matter where the cause of action arose.' "

The court pointed out that, in the present case, the defendant did not engage in "pervasive" corporate activities in the forum state comparable to those in *Perkins*, and Texas

could not be characterized as the corporation's "own backyard" (Pet. App. 52a, 54a). Thus, because Texas was an inconvenient forum for the defendant, and because Texas could not assert that this litigation serves to "protect[ ] its citizens" or to "provide[ ] a procedure for peaceful resolution of [a] dispute[ ] that [arose] in whole or in part within * * * [its] territory," the Supreme Court of Texas ruled that exercise of *in personam* jurisdiction would offend the Due Process Clause (*id.* at 55a).

3. On petition for rehearing, the Supreme Court of Texas, with three Justices dissenting, reversed its initial decision (Pet. App. 1a-31a), concluding that the defendant had sufficient "contacts" (*id.* at 5a) with the forum state to justify the proceeding against it. The court also identified what it believed to be a sufficient "interest" of the State of Texas in adjudicating the dispute. It noted first that, even though the plaintiffs are not residents of Texas, they nonetheless are "citizen[s] of this country." It further observed that the victims of the crash originally had been hired in Texas to work in Peru by Williams-Sedco-Horn (an organization based in Texas that is not involved in this litigation) (*id.* at 6a).[1] Accordingly, the court reasoned, Texas has an interest in "protecting the employees" of its local companies — even if those employees themselves are nonresidents and even if they are involved in an accident in another jurisdiction (*ibid.*).

Justices Pope and Barrow and Chief Justice Greenhill dissented for the reasons stated in the court's initial opinion (Pet. App. 15a-31a, 32a-45a). They explained that the Due Process Clause forbids a state to exercise *in personam* jurisdiction over a foreign corporation to adjudicate a claim instituted by a non-resident plaintiff that is unrelated to the forum, unless

[1] Williams-Sedco-Horn, a joint venture engaged in work on a pipeline in Peru, originally employed the decedents in Houston. They were transported in defendant's helicopter after they reached South America (Pet. App. 2a).

the corporation has such a pervasive presence in the forum that it is equivalent to an "insider" or local resident (*id.* at 43a). The dissenting Justices noted that "[t]his relationship is most commonly characterized by the fact that the forum state is the habitual residence, place of incorporation or principal place of business for the defendant" (*id.* at 43a n. 8), as was the case in *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952).

In addition, the dissenting Justices explained that the trial court had reached out to decide a controversy in which Texas had no legitimate interest. Citing *Curtis Publishing Co.* v. *Birdsong*, 360 F.2d 344, 346-347 (5th Cir. 1966), they observed that " '[t]here must be a rational nexus between the fundamental events giving rise to the cause of action and the forum State which gives the State sufficient interest in the litigation before it may constitutionally compel litigants to defend in a foreign forum' " (Pet. App. 42a n. 7). The dissenting Justices noted that, in this Court's past decisions, such as *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945), and *McGee* v. *International Life Insurance Co.*, 355 U.S. 220 (1957), the state which exercised jurisdiction had a direct and substantial interest in adjudicating the underlying controversy (Pet. App. 42a-43a n. 7). In the present case, by contrast, the forum state lacked any significant interest.

The dissenting Justices also expressed grave concern over the practical implications of the expansive decision of the majority. They pointed out that the majority decision serves to make Texas the "courthouse for the world" (*id.* at 32a), in contravention of the interests of other jurisdictions responsible for adjudicating local controversies. Thus, the majority "has established Texas as a 'magnet' forum," drawing foreign litigation into the local courthouse solely because the defendant has conducted unrelated business in that jurisdiction (*id.* at 45a).

INTRODUCTION AND SUMMARY OF ARGUMENT

1. The complaints in this case seek to compel a foreign corporation, which has its domicile and principal place of business in another jurisdiction, to defend itself in a state which has no connection with the plaintiffs or with the underlying cause of action. Such an inappropriate selection of forum imposes an unfair burden on the defendant and denies the protections guaranteed by the Due Process Clause. *International Shoe Co.* v. *Washington*, 326 U.S. 310, 317 (1945).

Filing suit in a forum distant from the domicile and principal place of business of a corporate defendant, and remote from the situs of the alleged tort, seriously encumbers the defendant's presentation of relevant evidence. Such a litigating tactic also exposes the defendant to substantial procedural disadvantages in contravention of the requirements of fundamental fairness. In view of these adverse consequences, this Court repeatedly has held that, as a general matter, a non-resident plaintiff may not sue a foreign corporation with respect to causes of action arising outside the forum. *Simon* v. *Southern Railway Co.*, 236 U.S. 115, 130 (1915); *Davis* v. *Farmers Cooperative Co.*, 262 U.S. 312, 315 (1923). Only when the forum is the domicile or principal place of business of a corporation may it compel the corporation to defend against a claim having no nexus to the forum. *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952).

2. Wholly apart from the burdens imposed by suits against foreign corporations raising claims that are unrelated to the forum, such suits invite state tribunals to exceed "the limits imposed on them by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 292 (1980). Accordingly, it is particularly important in such cases to carefully examine "the forum State's interest in adjudicating the dispute" (*ibid.*).

Under this standard, the plaintiff must establish that the suit in question seeks to protect injured residents of the forum,

to vindicate the property or pecuniary rights of the state, or to effectuate a regulatory policy of local government. In the absence of such facts, the state has no legitimate interest that justifies imposing on a foreign corporation the substantial burden of defending itself in an inconvenient forum.

3. The tort alleged in this case occurred outside the forum state and had no effect within it; the plaintiffs and the victims of the accident have no connection with the forum state; and the forum state is not the domicile or principal place of business of the defendant. The fact that the defendant does some local business that is unrelated to the plaintiff's claim is outweighed by those other considerations. In this situation, the burden of defending in the forum violates the Due Process Clause.

Moreover, the State of Texas has no interest in the outcome of this lawsuit that would justify its imposition of that weighty burden. This litigation does not seek to protect forum residents, to preserve the pecuniary or property rights of the state, or to advance any legitimate regulatory policy.

To permit the exercise of jurisdiction in a case such as this would have injurious consequences for manufacturers doing business throughout the United States. Today, most major manufacturers distribute products to consumers in all fifty states and thus do some business in each state. Acceptance of the principle announced by the court below — that any significant business in the forum state is sufficient to predicate suit against a corporation with respect to unrelated claims arising anywhere — would expose manufacturers to forum-shopping tactics of the most objectionable kind. Manufacturers could be sued in any state on any cause of action that accrued in any jurisdiction. This adverse result can be avoided by reaffirming the traditional rule that only the place of domicile or principal place of business is competent to adjudicate claims against a corporation that have no connection with the forum.

ARGUMENT

I. A FORUM STATE, WHICH IS NOT THE STATE OF INCORPORATION OR PRINCIPAL PLACE OF BUSINESS OF A CORPORATION, MAY NOT ASSERT *IN PERSONAM* JURISDICTION OVER THAT CORPORATION WITH RESPECT TO A CAUSE OF ACTION HAVING NO RELATIONSHIP TO THE FORUM STATE WITHOUT IMPOSING AN UNREASONABLE BURDEN ON THE CORPORATION IN VIOLATION OF THE DUE PROCESS CLAUSE

a. As a general matter, a forum state may exercise *in personam* jurisdiction over a corporation only if the plaintiff establishes "such contacts of the corporation with the state • • • as make it reasonable in the context of our federal system of government to require the corporation to defend the particular suit which is brought there. An 'estimate of the inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business is relevant in this connection." *International Shoe Co.* v. *Washington*, 326 U.S. 310, 317 (1945). In more recent cases, this Court has emphasized that "the burden on the defendant" is not merely "relevant" — it is "always a primary concern." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 292 (1980).

It is well established that the state of incorporation of a company is presumptively a fair and reasonable forum, regardless of the origin of the cause of action. See *Pennoyer* v. *Neff*, 95 U.S. 714, 735 (1877); *Restatement (Second) of Conflict of Laws* §41 & Comment (1971). Likewise, it is presumptively fair to file suit, regardless of the origin of the cause of action, in the forum which is the "principal place of business" of the corporation. *International Shoe Co., supra*, 326 U.S. at 317;

Perkins v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952).[2]

Beyond this, a corporation may be required to defend itself in a remote forum if it has entered the jurisdiction and there conducted business activities that give rise to a local tort or contract claim. See, *e.g.*, *McGee* v. *International Life Insurance Co.*, 355 U.S. 220, 223 (1957); *International Shoe Co., supra*, 326 U.S. at 320 ("The obligation which is here sued upon arose out of those very [local] activities").[3]

These principles provide no justification for the trial court's exercise of jurisdiction here. Texas is not the plaintiff's residence and is not the defendant corporation's domicile or principal place of business. Nor is it a state where the defendant corporation, while engaged in local business, committed a tort against, or infringed the contractual rights of, any resident. To the contrary, this suit was filed by a non-resident plaintiff in a state unrelated to the defendant's domicile or principal place of business and is based on a tort that occurred thousands of miles from the state's borders with no local impact whatsoever. As we demonstrate below, this inappropriate selection of forum is fundamentally unfair and violative of the protections of the Due Process Clause.

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[2] The state of incorporation and principal place of business can be identified with a minimum of uncertainty. See 1 *Moore's Federal Practice* ¶ 0.77 [2.-1] at 717.40, and ¶ 0.77 [3.-4] at 717.81 to 717.82 (1982 ed.); see also *Developments in the Law, State-Court Jurisdiction*, 73 Harv. L. Rev. 909, 933-934 (1960).

[3] By contrast, if the defendant corporation has not conducted local business activities and thereby committed some wrong within the forum, *in personam* jurisdiction may not be exercised. See *World-Wide Volkswagen Corp.* v. *Woodson, supra*, 444 U.S. at 296-299; see also *Shaffer* v. *Heitner*, 433 U.S. 186, 213-217 (1977); *Hanson* v. *Denckla*, 357 U.S. 235, 252 (1958).

b. The burdens imposed by filing a lawsuit in a jurisdiction that is not the domicile of any of the parties, and is not the situs of any of the events relevant to the determination of liability and damages, are substantial. If the complaint alleges defective design of a product, the witnesses and relevant documentary and engineering proof generally will be located in the company's principal place of business. Similarly, if the complaint alleges negligent use of a product (as in the present case), the witnesses to the event, the documentary proof, and the physical evidence all will be located in the jurisdiction where the accident took place. None of the relevant evidence will be conveniently available in a state that has no relationship to the incident and is not the place of business of the defendant or the residence of the plaintiff. See, *e.g., Gulf Oil Corp.* v. *Gilbert*, 330 U.S. 501, 511 (1947): "Lynchburg, some 400 miles from New York, is the source of all proofs for either side, with possible exception of experts. Certainly, to fix the place of trial at a point where litigants cannot compel personal attendance and may be forced to try their cases on deposition, is to create a condition not satisfactory to court, jury or most litigants." See also *Piper Aircraft Co.* v. *Reyno*, 454 U.S. 235, 258 (1981) ("A large proportion of the relevant evidence is located in Great Britain").[4]

The burdens on a corporation seeking to defend itself in a distant forum are not limited to difficulties in presenting evidence. See *Gilbert, supra*, 330 U.S. at 507: "the open door may admit those who seek not simply justice but perhaps justice blended with some harassment. A plaintiff sometimes is under temptation to resort to a strategy of forcing the trial at a most inconvenient place for an adversary, even at some inconven-

[4] *Gilbert* and *Reyno* applied the requirements of the doctrine of *forum non conveniens*. Those cases are instructive here because, like the doctrine of *forum non conveniens*, the Due Process Clause requires "[a]n 'estimate of the inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business * * *." *International Shoe, supra*, 326 U.S. at 317.

ience to himself." In *Gilbert*, the plaintiff acknowledged that he brought suit in an inconvenient forum because his large demand for money damages would "stagger the imagination" of "a local jury." 330 U.S. at 510.[5]

Still worse, plaintiffs frequently file suit in jurisdictions that are inconvenient for the defense, inconvenient for themselves, and inconvenient for every witness involved in the litigation solely to obtain the benefit of liberal "procedural" rules which the forum state applies. See, *e.g.*, *Cowan* v. *Ford Motor Company*, 694 F.2d 104 (5th Cir. 1982), discussed on pages 25-26, *infra*, where Texas residents filed a complaint in Mississippi concerning an alleged tort in Texas solely to obtain the benefit of the longer Mississippi statute of limitations.[6]

The same forum-shopping tactic is evident in many other cases. See, *e.g.*, *Keeton* v. *Hustler Magazine, Inc.*, 682 F.2d 33, 35 (1st Cir. 1982), cert. granted No. 82-485 (January 24, 1983) ("in this case, it seems likely that New Hampshire * * * would consider its statute of limitations procedural, and apply it, resurrecting an action that is dead everywhere else. * * * This fact explains why plaintiff wishes to sue in New Hampshire, but it does not automatically make it fair for her to do so. Indeed, these very circumstances suggest why it would be unfair to

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[5] Plaintiffs frequently engage in forum shopping solely to obtain the benefit of liberal damage awards returned by juries in particular geographic areas, or to obtain substantial settlements through the threat of such damage awards. See, *e.g.*, *Michigan Central Railroad Co.* v. *Mix*, 278 U.S. 492, 495 (1929) (the plaintiff brought suit in a remote forum because "her chances of recovery would be better there").

[6] The Fifth Circuit in *Cowan* rejected the contention that the Due Process and Full Faith and Credit Clauses require the forum state to apply the shorter statute of limitations of the state where the cause of action arose. But see J. Martin, *Constitutional Limitations on Choice of Law*, 61 Cornell L. Rev. 185, 221, 223 n. 124 (1976) ("a state should be forbidden from entertaining a cause of action after it is dead in the state which created it").

allow plaintiff to sue"); *Seymour* v. *Parke, Davis & Co.*, 423 F.2d 584, 585 (1st Cir. 1970) ("Plaintiff concedes that her only reason for suing in New Hampshire is to avoid the Massachusetts statute of limitations").

c. In view of the unfair burdens imposed by such forum-shopping tactics, this Court repeatedly has held that, as a general matter, a corporation may not be sued by a non-resident plaintiff on a cause of action having no relationship to the forum state. Such suits may be entertained *only* if the forum state is the corporation's domicile or principal place of business. This follows not only as a matter of discretion under the doctrine of *forum non conveniens*, but also of constitutional compulsion under the Due Process Clause. See, *e.g.*, *Old Wayne Mutual Life Association* v. *McDonough*, 204 U.S. 8, 21-23 (1907), holding that a foreign corporation's consent to be sued in the forum state based on claims arising from its business activities cannot constitutionally be deemed to encompass claims arising from business activities in other states.[7] Justice Harlan explained that "such assent cannot properly be implied where it affirmatively appears, as it does here, that the business was not transacted in [the forum state]." A judgment obtained on the basis of such an unrelated cause of action is "void as wanting in due process of law." *Id.* at 22-23. The Court reiterated that conclusion in its unanimous opinion in *Simon* v. *Southern Railway Company*, 236 U.S. 115, 130 (1915):

> "[T]his power to designate by statute the officer upon whom service in suits against foreign corporations may be made relates to business and transactions within the jurisdiction of the State enacting the law. Otherwise, claims on contracts wherever made and suits for torts wherever committed might by virtue of such compulsory

[7] The Court in *Old Wayne* considered a statute providing that foreign corporations doing local business are deemed to "consent" to service of process in the forum state. Today, "[p]robably all American states have statutes to this effect." R. Leflar, *American Conflicts Law* §28 at 51 (3d ed. 1977).

> statute be drawn to the jurisdiction of any State in which the foreign corporation might at any time be carrying on business. The manifest inconvenience and hardship arising from such extra-territorial extension of jurisdiction * * * could not defeat the power if in law it could be rightfully exerted. But these possible inconveniences serve to emphasize the importance of the principle laid down in *Old Wayne Life Association* v. *McDonough*, 204 U.S. 22, that the statutory consent of a foreign corporation to be sued does not extend to causes of action arising in other States."

Accord, *Louisville & Nashville R. Co.* v. *Chatters*, 279 U.S. 320, 328 (1929).

This Court has reached the same result in cases applying the Commerce Clause. For example, in *Davis* v. *Farmers Cooperative Co.*, 262 U.S. 312 (1923), the Court invalidated a state statute that required a corporation to consent to suit on causes of action unrelated to the forum state as a condition to soliciting business in the forum. Justice Brandeis, writing for the Court, emphasized the unfair burden imposed by such an attempted assertion of jurisdiction (*id.* at 315):

> "[T]his statute compels every foreign interstate carrier to submit to suit there as a condition of maintaining a soliciting agent within the State. Jurisdiction is not limited to suits arising out of business transacted within [the forum State]. * * * It is asserted, whatever the nature of the cause of action, wherever it may have arisen, and although the plaintiff is not, and never has been, a resident of the State. * * * This condition imposes upon interstate commerce a serious and unreasonable burden which renders the statute obnoxious to the commerce clause."

The Court took judicial notice (*ibid.*) of the fact that "litigation in States and jurisdictions remote from that in which the cause of action arose entails absence of employees from their customary occupations," and thus "impairs efficiency in operation, and causes, directly and indirectly, heavy expense to the carriers * * *." Accord, *Michigan Central Railroad Co.* v. *Mix*, 278 U.S.

492, 495-496 (1929); *Denver & Rio Grande Western Railroad* v. *Terte*, 284 U.S. 284, 287-288 (1932); *Sioux Remedy Co.* v. *Cope*, 235 U.S. 197, 205 (1914).

Of course, if the forum state is the principal place of business of a foreign corporation, it may assert jurisdiction even with respect to causes of action that arise in other states. See *International Shoe Co., supra*, 326 U.S. at 317-318; *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952). In *Perkins*, the defendant corporation relocated its corporate headquarters and principal place of business to Ohio after enemy forces occupied its overseas properties during World War II. In that new location, the corporation carried on "continuous and systematic corporate activities," including "directors' meetings, business correspondence, banking, stock transfers, payment of salaries, purchasing of machinery, etc." *Id.* at 445. In addition, the president, general manager, and principal stockholder of the company resided in Ohio and maintained an office there for supervision of the company's affairs. *Id.* at 447-448.[8]

Thus, *Perkins* carves out an exception to the principle of *Old Wayne, Simon*, and the other cases cited on pages 12-13, *supra*, when the foreign corporation is so pervasively present in the forum state as to be the functional equivalent of a local domiciliary. In the absence of such facts, however, the Due

[8] "He kept there office files of the company. He carried on there correspondence relating to the business of the company and its employees. He drew and distributed there salary checks on behalf of the company, both in his own favor as president and in favor of two company secretaries who worked there with him. He used and maintained in Clermont County, Ohio, two active bank accounts carrying substantial balances of company funds. A bank in Hamilton County, Ohio, acted as transfer agent for the stock of the company. Several directors' meetings were held at his office or home in Clermont County. From that office he supervised policies dealing with the rehabilitation of the corporation's properties in the Philippines and he dispatched funds to cover purchases of machinery for such rehabilitation." *Id.* at 448.

Process Clause prohibits assertion of jurisdiction over a foreign corporation to adjudicate a cause of action having no relationship to the forum state. See A. von Mehren and D. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1144 (1966); *Developments In The Law, State-Court Jurisdiction*, 73 Harv. L. Rev. 909, 931-932 (1960). In the words of the dissenting Justices in the court below, imposition of the weighty burden of defending a lawsuit having no nexus to the forum state is reasonable only if the state is properly viewed as the "corporate headquarters," "habitual residence," or "principal place of business" of the foreign corporation (Pet. App. 43a-44a & n. 8).

Stated otherwise, a foreign corporation's mere conduct of "*some* business" within the jurisdiction — regardless of the systematic or continuous nature of that business — is an insufficient basis for predicating general jurisdiction. *Old Wayne, supra*, 204 U.S. at 21; *Rosenberg Co.* v. *Curtis Brown Co.*, 260 U.S. 516, 518 (1923). See also *International Shoe, supra*, 326 U.S. at 318, noting in dictum that "continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity * * *." Unless the corporate defendant's local presence is comparable to that in *Perkins*, the rule of *Old Wayne* and its progeny applies. That rule requires dismissal of a suit based on a cause of action unrelated to the forum state.[9]

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[9] No decision of this Court has upheld suit by a non-resident plaintiff against a foreign corporation based on a cause of action unrelated to the forum unless the corporation has made the forum its *de facto* headquarters or principal place of business. The view of the majority in the court below that such a suit may be predicated on mere unrelated business "contacts" with the forum cannot be reconciled with this Court's decisions cited on pages 12-14, *supra*, and finds no support in *Perkins*.

II. A FORUM STATE, WHICH HAS NO INTEREST IN THE EVENTS GIVING RISE TO A CAUSE OF ACTION IN ANOTHER JURISDICTION, AND WHICH HAS NO INTEREST IN PROTECTING NON-RESIDENT PLAINTIFFS, MAY NOT ASSERT *IN PERSONAM* JURISDICTION OVER A FOREIGN CORPORATION WITHOUT EXCEEDING THE TERRITORIAL LIMITS ON ITS SOVEREIGN POWERS IMPOSED BY THE DUE PROCESS CLAUSE

Wholly apart from the burdens imposed on a foreign corporation by a suit brought in a forum having no relationship to the underlying controversy, the Due Process Clause places restrictions on the power of state courts to adjudicate such disputes. Those restrictions derive from the limited status of state tribunals in the interstate and international judicial system.

a. As this Court stated in *World-Wide Volkswagen Corp.* v. *Woodson, supra,* 444 U.S. at 291-292, the Due Process Clause serves two "related" but "distinguishable" functions. "It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." Thus, among the factors to be considered in applying the Due Process Clause are "the forum State's interest in adjudicating the dispute" and "the interstate judicial system's interest in obtaining the most efficient resolution of controversies." *Id.* at 292. In every case, "the reasonableness of asserting jurisdiction over the defendant must be assessed 'in the context of our federal system of government,' " and the need for " 'orderly administration of the laws.' " *Id.* at 293-294. Accord, *Rush* v. *Savchuk,* 444 U.S. 320, 327 (1980) (requiring a careful analysis of " 'the relationship among the defendant, the forum, and the litigation' "); see also *id.* at 329 and 332.

With substantial consistency, the federal courts of appeals have applied these principles to preclude exercises of *in personam* jurisdiction in diversity litigation unless there is "a rational nexus between the fundamental events giving rise to the cause of action and the forum State which gives [the] State sufficient interest in the litigation [to] constitutionally compel litigants to defend in a foreign forum." *Curtis Publishing Co.* v. *Birdsong*, 360 F.2d 344, 346-347 (5th Cir. 1966). See *Keeton* v. *Hustler Magazine, Inc.*, 682 F.2d 33, 35 (1st Cir. 1982), cert. granted No. 82-485 (January 24, 1983) ("New Hampshire has no special interest in protecting a nonresident against this out-of-state activity"); *Ratliff* v. *Cooper Laboratories, Inc.*, 444 F.2d 745, 748 (4th Cir. 1971) ("Significant in the instant factual setting is the lack of a 'rational nexus' between the forum state and the relevant facts surrounding the claims presented"); *Seymour* v. *Parke, Davis & Co.*, 423 F.2d 584, 585-586 (1st Cir. 1970) (denying jurisdiction because "the cause of action is not only wholly unrelated to the forum and the business conducted therein, but the plaintiff, too, is unconnected with the forum"); *L.D. Reeder Contractors of Arizona* v. *Higgins Industries, Inc.*, 265 F.2d 768, 779 (9th Cir. 1959) (refusing to "sanction the filing of suit in any federal district court in the United States in whose geographical area a national distribution of manufactured products was advertised, sold or delivered, irrespective of where any contract which was allegedly the basis of the lawsuit was negotiated or consummated"); *Empire Abrasive Equipment Corp.* v. *Watson*, 567 F.2d 554, 557 (3d Cir. 1977) ("A state must have some palpable interest — rationally connected with public policy — in adjudicating a dispute within its borders for jurisdiction to be lawfully acquired"); *Blount* v. *Peerless Chemicals, Inc.*, 316 F.2d 695, 697 (2d Cir. 1963) (the Due Process Clause requires a "relationship" between the forum state and "those activities of the cause of action upon which suit is founded"); see also *State ex rel. Michelin* v. *Wells*, 657 P.2d 207, 210-211 (Oregon S. Ct. 1982) ("there must be at least one contact with the forum state which is substantively relevant to

the cause of action").[10] As the dissenting Justices in the court below correctly concluded (Pet. App. 32a), these principles bar a state tribunal from attempting to function as the "courthouse for the world." They confine the state court's jurisdiction to the scope of its legitimate territorial interests. But compare *Cowan* v. *Ford Motor Co.*, 694 F.2d 104 (5th Cir. 1982), discussed on pages 25-26, *infra*.

Ordinarily, a state's interest extends only to the protection of its "own citizens" who have been injured by the actions of the defendant (Pet. App. 43a n. 7). In other words, "the state has no legitimate interest in protecting non-resident" victims of alleged tortious acts. *Edgar* v. *Mite Corp.*, ____ U.S. ____, 50 U.S.L.W. 4767, 4772 (1982). In the absence of injury to a forum state resident or the occurrence of a wrong inside the state, the plaintiff must demonstrate some tangible adverse effect within the forum's borders, some harm to the state's own "property" or pecuniary interest, or some distinct infringement of the state's internal "regulatory policies" (Pet. App. 43a n. 7).

If such facts are not established, a state court has no legitimate interest in adjudicating the lawsuit. It therefore has no power to impose upon the defendant the substantial burden of defending itself in an inconvenient forum. Moreover, any attempt to assert jurisdiction without a palpable state interest only impairs the right of *other* jurisdictions to vindicate their own internal policies. For example, in cases such as *Cowan* v. *Ford Motor Co.*, discussed on pages 25-26, *infra*, and *Schreiber* v. *Allis-Chalmers Corp.*, 611 F.2d 790 (10th Cir. 1979), the plaintiffs' forum shopping resulted in the filing of suit in a jurisdiction having no interest in the subject matter of the litigation. This inappropriate choice of forum had the purpose

[10] See also L. Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 Supreme Court Rev. 77, 82; Comment, *Federalism, Due Process, and Minimum Contacts: World-Wide Volkswagen Corp.* v. *Woodson*, 80 Columbia L. Rev. 1341, 1343-1349 (1980).

and effect of nullifying the statute of limitations of the only state that possessed an interest in the controversy.

b. Forum-shopping tactics, which result in the filing of suits in jurisdictions having no interest in the underlying controversy, impose a serious strain on the interstate and international judicial system. Crowded dockets of local courts are increasingly burdened by foreign suits imported into the state to obtain the benefit of liberal procedural rules and anticipated generous jury awards. As this Court observed in *Gulf Oil Corp.* v. *Gilbert, supra,* 330 U.S. at 508: "Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin."[11]

Beyond this, imported litigation compels local jurors to expend substantial time to determine rights and liabilities of parties in cases arising in other jurisdictions. See *Gilbert, supra,* 330 U.S. at 508-509: "Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation. In cases which touch the affairs of many persons, there is reason for holding the trial in their view and

[11] *Cowan* v. *Ford Motor Company, supra,* 694 F.2d at 107, illustrates those severe strains on the judicial system. Under the Fifth Circuit's decision in that case, plaintiffs from other states may file tort actions in the district courts in Mississippi based on events occurring outside the state in order to obtain the benefit of Mississippi's 6-year statute of limitations. Most states have substantially shorter statutes of limitations. Thus, plaintiffs who have slept on their rights in other jurisdictions may bring actions against any manufacturer in the nation which distributes its products in Mississippi, regardless of the domicile of the parties and the locus of the alleged tort.

According to the Monthly Report of the Clerk of Court for the Southern District of Mississippi, the court where the *Cowan* case was filed, there are now 2,989 *civil* cases pending in that court — a caseload that is shouldered by only three judges, one of whom is on senior status. When plaintiffs residing in other states bring suit in Mississippi solely to escape the statute of limitations applicable to their causes of action, this only serves to "further congest already crowded courts." *Reyno, supra,* 454 U.S. at 252.

reach rather than in remote parts of the country where they can learn of it by report only. There is a local interest in having localized controversies decided at home."

Finally, a trial court that assumes jurisdiction over a foreign cause of action generally must determine and apply the substantive law of the place where the tort occurred or where the contract was consummated. This is a significant additional burden for the trial judge. See *Gilbert, supra,* 330 U.S. at 509: "There is an appropriateness, too, in having the trial of a diversity case in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws, and in law foreign to itself." That concern applies *a fortiori* in a case arising outside of the United States, in which the applicable substantive law is that of a foreign nation whose official case reports and statutes are not in English. See *Reyno, supra,* 454 U.S. at 260 (noting the trial court's "lack of familiarity" with foreign law).

In short, the filing of suit in a distant forum having no substantial interest in resolving the dispute serves only to frustrate the "fair and orderly administration of the laws" in the interstate and international judicial system. *International Shoe Co., supra,* 326 U.S. at 319.

III. A FOREIGN CORPORATION IS NOT AMENABLE TO *IN PERSONAM* JURISDICTION MERELY BECAUSE IT CONDUCTS BUSINESS IN THE FORUM STATE THAT IS UNRELATED TO THE ASSERTED CAUSE OF ACTION

The underlying question presented in this case, and in cases such as *Cowan* v. *Ford Motor Company, supra,* is whether a foreign corporation's conduct of commercial activities in a state far removed from its domicile and principal place of business is a sufficient basis to adjudicate controversies having no nexus to the state or the business conducted therein. The answer to this question is of vital importance to manufacturing corporations across the nation. Most major manufacturers

distribute products to consumers in all fifty states. A holding by this Court that general jurisdiction may be predicated on such commercial activity would expose those corporations to suit in virtually every state in the union on any claim arising anywhere. The Due Process Clause has long stood as a barrier to such an obliteration of traditional jurisdictional limitations.

a. The requirements of the Due Process Clause, summarized on pages 8-20, *supra,* prevent the State of Texas from asserting jurisdiction in a case such as this. There is no dispute that the defendant's place of incorporation and principal place of business is the nation of Colombia (Pet. App. 32a, 48a). Accordingly, there is no doubt that the present case was not filed in the defendant's principal place of business or place of domicile.

It is equally clear that the alleged tort, and all events giving rise to it, occurred outside of the forum. The helicopter crash occurred in Peru, allegedly as a result of "pilot error" (Pet. App. 53a). There is no proof that events in Texas contributed to that pilot error, or that the helicopter was defectively manufactured in Texas.[12]

Finally, there is no dispute that all of the persons killed in the accident, and all of the survivors who have brought suit, are residents of states other than the forum state (Pet. App. 32a, 48a, 70a). Thus, in the words of the dissenting Justices in the court below, "[n]either the plaintiffs, the decedents, the de-

[12] In its initial decision, the Supreme Court of Texas observed (Pet. App. 53a): "there is no evidence of a connection between the cause of action and Helicol's dealings with Bell Helicopter in Fort Worth. A lawsuit based upon the use of a defective helicopter purchased from Bell might have indicated such a connection. In the present case, however, Hall and the other plaintiffs offered evidence of Helicol's negligence due to *pilot error.* There was no showing that the negligence extended beyond the events immediately surrounding the accident." The court, in its subsequent opinion granting rehearing, did not question the accuracy of this factual statement.

fendant, nor the tort action have any connection with Texas" (Pet. App. 32a).

Because the forum state is distant from the domicile of the parties and witnesses, this proceeding involves all of the unreasonable burdens discussed on pages 10-13, 19-20, *supra*. Exercise of jurisdiction has required the defendant to litigate in a court far removed from its domicile and base of operations, and far removed from the site of all substantively relevant events. In addition, trial of this complex case has added to the burden on the Texas judicial system and imposed upon the limited time of Texas jurors (Pet. App. 64a). The decision below also opens the doors of Texas courts to any suit against any company purchasing or selling products in Texas, and has the potential to disrupt the orderly administration of justice in the interstate judicial system.

Despite the generalized assertions in the majority opinion in the court below (Pet. App. 6a), the State of Texas has no palpable interest in the subject matter of this litigation that would permit it to assert *in personam* jurisdiction over the foreign corporation. It cannot, of course, claim to be protecting its own residents. None of the victims of the crash or their survivors resided in Texas.[13] Moreover, the helicopter crash in the Amazon jungles of Peru did not have any identifiable effect within the borders of the State of Texas, did not impair the State's pecuniary interest, and did not infringe any regulatory policy of the state. See *Shaffer* v. *Heitner, supra,* 433 U.S. at 214 (noting "the failure of the Delaware Legislature to assert the state interest appellee finds so compelling.").[14]

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[13] See *International Milling Co.* v. *Columbia Transportation Co.*, 292 U.S. 511, 519-520 (1934) ("we do not hold that the residence of the suitor will fix proper forum without reference to other considerations. * * * Residence, however, even though not controlling, is a fact of high significance").

[14] The majority opinion noted (Pet. App. 3a) that defendant obtained "liability insurance payable in American dollars" to protect

(Footnote continued on next page)

It is, of course, true, as the court below noted, that the plaintiffs here are residents of "this country." But Texas has no *parens patriae* relationship with the citizens of other states. See *Edgar* v. *Mite Corp.*, ____ U.S. ____, 50 U.S.L.W. 4767, 4772 (1982), explaining that "the state has no legitimate interest in protecting non-resident" victims of alleged tortious acts. See also *Hanson* v. *Denckla, supra,* 357 U.S. at 252.

The court also suggested that Texas has an interest in protecting "employees of its residents" (Pet. App. 6a). (The "resident" referred to by the court was a Texas joint venture which did not include the defendant and was not a party to this litigation (see page 4, *supra*).) But if, in fact, Texas had a legitimate interest in adjudicating any claim of any employee of any Texas company — regardless of the employee's residence, the situs of the alleged tort, and the relationship between the employer and the claim at issue — then the countless employees of "countless international companies" with "headquarters" in Texas (see Pet. App. 6a) would be privileged to sue other parties in Texas in utter disregard of the jurisdictional principles summarized above. We are aware of no precedent that would support such a sweeping proposition. It is significant, moreover, that the record is devoid of evidence that any Texas "employer" has ever alleged injury to itself as a result of the accident in Peru, or filed any claim related thereto in the Texas judicial system.[15]

(Footnote continued from previous page)

itself against damage claims. The existence of that insurance does not, however, give the forum state an interest in adjudicating this particular case, and does not mitigate the unfair burden of conducting trial far from the defendant's domicile and principal place of business and far from the scene of the alleged tort.

[15] The plaintiffs' desire to secure "convenient" relief (Pet. App. 6a) does not support the majority's conclusion. See *Rush* v. *Savchuk, supra,* 444 U.S. at 332, warning against a "subtle shift in focus from the defendant to the plaintiff." See also, Note, *Jurisdiction Over*

(Footnote continued on next page)

While the court below observed (Pet. App. 5a) that the defendant had "numerous" business contacts in Texas, including the purchase of equipment, the training of employees, and the negotiation of business contracts (*id.* at 9a), those contacts have no relevance here. The defendant's activities in Texas — including its negotiations concerning the construction project in Peru — have no substantive connection to the cause of action.[16] As the Texas Supreme Court observed in its initial opinion, "[n]o evidence has been presented * * * indicating that the negotiations in any way dealt with the deceased workers or any matters leading or contributing to the helicopter crash in Peru. As such, a connection between the cause of action based upon the South American disaster and Helicol's activities in Texas is remote and at best coincidental" (Pet. App. 53a). Such unrelated contacts are insufficient to support jurisdiction unless they are so pervasive as to make the forum state the foreign corporation's principal place of business. See, *e.g., Perkins* v. *Benguet Mining Co., supra,* 342 U.S. at 445-448;

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Foreign Corporations -- An Analysis of Due Process, 104 U. Pa. L. Rev. 381, 398-399 (1955): "The balance in each case is made between the interests of the defendant on one side and the interests of the *state* (not merely the plaintiff) on the other. * * * If the state chooses to allow a nonresident plaintiff to use its forum, it will do so probably as a matter of comity, but that decision does not enter into the balance of interests that determines whether the assertion of jurisdiction is reasonable or unreasonable."

[16] As Professor Brilmayer has observed (*How Contacts Count: Due Process Limitations on State Court Jurisdiction, supra,* 1980 Sup. Ct. Review at 82): "Substantive relevance provides a natural test. A contact is related to the controversy if it is * * * a fact relevant to the merits. * * * In contrast, an occurrence in the forum State of no relevance to a totally domestic cause of action is an unrelated contact. * * *." See also *Rush* v. *Savchuk, supra,* 444 U.S. at 329, explaining that the element relied on by the plaintiff to predicate jurisdiction "is not the subject matter of the case, * * * nor is it related to the operative facts of the negligence action."

Rosenberg Bros. & Company, Inc. v. *Curtis Brown Co., supra,* 260 U.S. at 517-518.

In short, the dissenting Justices in the court below correctly concluded (Pet. App. 44a) that "Texas should not assume jurisdiction over this case that involves nonresident plaintiffs and a nonresident defendant when the cause of action arises out of facts totally unrelated to the forum state."

b. Acceptance of the contrary view adopted by the majority of the Supreme Court of Texas would expose manufacturers to unrestrained forum shopping destructive of the purposes of the Due Process Clause. That danger is exemplified by *Cowan* v. *Ford Motor Company,* 694 F.2d 104 (5th Cir. 1982). *Cowan* involves a complaint filed by Texas residents in Mississippi; the complaint seeks redress for a tort that occurred solely in Texas. The defendant, Ford Motor Company, has no connection with the forum other than selling products there through independent retailers, which it also does in every other state. Thus, the tort at issue has no connection whatsoever with Mississippi, and Mississippi has no interest in the resolution of the dispute. The plaintiffs' only reason for filing suit in Mississippi is to escape the applicable statute of limitations in Texas. See page 19, note 11, *supra.*

Most of the nation's major manufacturers of consumer products — whether the products are automobiles, magazines, or toothbrushes — distribute their products in all fifty states of the union.[17] Each state, moreover, has enacted some kind of foreign corporation statute which subjects companies doing business locally to the jurisdiction of local courts, usually by requiring them to appoint an agent to accept process within the

[17] We disagree with petitioner's suggestion (Pet. 10-11) that the protections of the Due Process Clause apply differently to purchasers and sellers. The principles summarized above apply equally to both purchasers and sellers engaged in interstate commerce. See, *e.g., World-Wide Volkswagen, supra,* 444 U.S. at 291-294, 296.

state.[18] If, as the Fifth Circuit concluded in *Cowan*, the conduct of business in such a state on a regular basis is a sufficient predicate for jurisdiction, then it would follow that most of the nation's major manufacturers are automatically amenable to suit on any cause of action in every state in the union. This would be true regardless of the domicile of the parties, the situs of the alleged wrong, and the respective interests of the states involved.

Such a result would provide an open invitation to forum shopping of the most objectionable kind and would interfere unreasonably with the free flow of interstate commerce. Jurisdictions with the longest statutes of limitations would be selected by plaintiffs regardless of the burdens imposed on the local judicial system and without consideration of the convenience of parties and witnesses.[19] This result would permit

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[18] Those statutes do not alter the analysis. See, *e.g.*, *Ratliff* v. *Cooper Laboratories, Inc.*, 444 F.2d 745, 748 (4th Cir. 1971): "the application to do business and the appointment of an agent for service to fulfill a state law requirement is of no special weight in the present context." A state has no power to require the defendant to surrender the protections of the due process clause as a prerequisite to engaging in interstate commerce within the jurisdiction. See *Sioux Remedy Co.* v. *Cope*, 235 U.S. 197, 205 (1914); *Frost Trucking Co.* v. *Railroad Commission of California*, 271 U.S. 583, 594-600 (1926); A. Scott, *Jurisdiction Over Nonresidents Doing Business Within A State*, 32 Harv. L. Rev. 871, 887 (1919) ("Undoubtedly a statute forbidding a foreign corporation to enter the state to carry on interstate commerce, without filing a consent to the jurisdiction of the courts of the state as to all causes of action, no matter where or how arising, is unconstitutional").

[19] Discretionary transfer of such cases to a more convenient forum under 28 U.S.C. 1404(a), a provision that applies only to federal proceedings, does not remedy the unfairness associated with such forum-shopping tactics, since the applicable law remains the law of the transferor jurisdiction—which some courts have held to include the statute of limitations. *E.g.*, *Schreiber* v. *Allis-Chalmers Corp.*, 611 F.2d 790 (10th Cir. 1979).

states to "reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system" (*World-Wide Volkswagen, supra,* 444 U.S. at 292), and would frustrate "the interstate judicial system's interest in obtaining the most efficient resolution of controversies" (*ibid.*).

These adverse consequences may be avoided by reaffirming in the present case that the Due Process Clause bars a plaintiff from suing a corporation on a cause of action having no relationship to the forum state unless the forum is the domicile or principal place of business of the corporation.[20]

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[20] Regardless of this Court's disposition of the present case, there should be little doubt as to the correct disposition of a case such as *Cowan.* In contrast to the present case, the claim in *Cowan* has not even a remote or coincidental link with the forum, and the plaintiffs' forum-shopping activities have nullified the protections of the statute of limitations of the only jurisdiction that has an interest in the controversy.

CONCLUSION

The judgment of the Supreme Court of Texas should be reversed.

Respectfully submitted.

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